



STATE OF INDIANA

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### **Vaccine Mandate Update**

President Biden's administration has ordered four vaccine mandates that impose different obligations on different groups. They are summarized here as of December 8, 2021.

1. **OSHA mandate** – The federal Occupational Health and Safety Administration, "OSHA", issued an emergency standard on November 4, 2021, that would require all U.S. employers with at least 100 employees to require all employees to be vaccinated OR be tested weekly at the employee's cost but on the employer's time. AG Rokita filed a lawsuit challenging the emergency standard. This mandate is presently stayed by court order, and on November 11, OSHA suspended all implementation and enforcement of the standard pending litigation in the Sixth Circuit Court of Appeals. The Department of Justice seeks to vacate the stay and enforce the vaccination requirement, but Indiana is opposing that effort.

2. **Federal Contractor Mandate** – President Biden issued Executive Order 14042 requiring employees of most federal contractors or suppliers to be vaccinated, with no testing or masking option. The order includes all *new* federal contracts, and federal agencies have even been pressuring *existing* contractors to require employee vaccination. Because this mandate impacts state entities, AG Rokita filed suit challenging the contractor mandate and asked for an injunction. Before the judge in Indiana's suit could rule on that request, a different court issued a nationwide injunction against the contractor mandate; as a result, federal contractors are not mandated by the federal government to impose vaccination requirements on their workers.

3. **Federal Employee Mandate** – President Biden issued Executive Order 14043 requiring all federal employees to be fully vaccinated—with no testing or masking option—by November 22, 2021. <https://www.saferfederalworkforce.gov/faq/vaccinations/>. The Biden administration has said it will enforce this Executive Order at first with education and reprimands, with more serious job-related actions such as suspension and removal to follow, if necessary.

4. **Medicare/Medicaid Provider Mandate** – The Centers for Medicare and Medicaid Services issued a rule directing any facility receiving Medicare or Medicaid dollars to require vaccination of all workers having direct or indirect patient contact, with no testing or masking option. AG Rokita filed suit seeking an immediate injunction against the mandate, and the court has granted that injunction. Employees of Medicaid and Medicare providers are not mandated by the federal government to receive the vaccination.

### **Exceptions to the Vaccination Mandates**

Generally, the federal mandates contemplate exceptions as provided by law.

### **Right of Private Employers**

Regardless of federal law, Indiana employers may require employees to be vaccinated. Private employers can demand vaccine documentation and set their own rules governing how, when, and at whose cost vaccines are required. They may discipline or terminate employees for failing to comply with company rules, so long as they do so fairly and in accordance with the law. Many private employers with vaccine requirements acknowledge medical and religious exemptions.

**Limits of Public Employers**

State and local government employers may not ask employees to provide documentation of vaccination status.

*The above is provided for informational purposes only and is not intended to be legal advice.*